Excise *v.* Sackrider, 35 N. Y., 154, 157; Ontario Knitting Co. *v.* State, 205 N. Y., 409, 416, 98 N. E., 909, and authorities there cited.)

If we are right in the above view, it is unnecessary to determine the other points suggested by the relator; but it seems obvious that where a statute prescribes that certain conditions must be performed in order to give jurisdiction to act there must be a full compliance with the statute, unless there is some legitimate and controlling excuse for nonperformance, as in Walden *v.* City of Jamestown, 178 N. Y., 213, 70 N. E., 466. Here it is conceded that one of the members of the local board of health was not served with notice, though the statute requires that each member shall be so served; but it is urged that this particular member did not care to be served, and was not interested in the matter. But it is not a question of the desires of Julius F. Hicks personally. The law required that each member of the town board of health should have a written notice at least 20 days before the hearing, and whether Mr. Hicks had or had not a personal interest in the matter is of no consequence. As a public officer of the town he was required to have notice, and the board could not get jurisdiction of the subject matter of the petition without some such notice.

* * * * * * *

The determination of the persons assuming to act as a board to determine the location of a hospital in the town of Queensbury should be set aside, as having been made without jurisdiction.

Determination annulled, with $50 costs and disbursements. All concur.

PENNSYLVANIA SUPREME COURT.

Trichinosis—Meat Packer Held Liable for Damages for Death Resulting from Eating Pork Containing Trichinæ.

CATANI v. SWIFT & Co. (Oct. 4, 1915.)

A meat packer who sells pork containing trichinæ, the eating of which causes disease, is liable for injury to the consumer even though the pork was purchased from an intermediate dealer.

The fact that meat has been inspected and approved by United States inspectors in accordance with the Federal pure food laws does not relieve the manufacturer from liability for injury to the consumer if the meat is diseased and unwholesome.

A packer who prepares and sells articles of food which are unwholesome, and which cause disease in the consumer, is liable for injury caused by eating the food whether or not the packer knows that it is unwholesome.

[95 Atlantic Reporter, 931.]

FRAZER, J.: This was an action of trespass by plaintiff to recover damages for the death of her husband which resulted from eating unwholesome and diseased pork slaughtered by defendant in the State of Missouri and shipped to its distributing house at the borough of Nanticoke, in this State, and there sold to a dealer and delivered to plaintiff in its original package, which bore the Government stamp showing an inspection by United States inspectors. Plaintiff produced evidence that her husband and other members of the family had eaten the pork and all subsequently became ill, her husband dying a short time later from what the evidence tended to show was trichinosis, a disease resulting from eating meat containing trichinæ, a small parasite or germ which multiplies rapidly and bores through the walls of the intestines, stomach, and muscles of the human body and poisons the system. The trial judge submitted to the jury the questions whether plaintiff's husband died of trichinosis, and, if so, if he contracted the disease from pork sold by defendant and eaten by him. The jury returned a verdict for plaintiff, thus deciding both questions in the affirmative. Judgment non obstante veredicto was, however, subsequently entered for defendant on the ground that the Federal laws having been complied with and the meat inspected by the United States inspectors, and certified to be sound, defendant was not liable, in the absence of negligence in the transportation or handling

of the meat subsequent to the inspection, even though it made no further inspection. From the judgment entered plaintiff appeals, assigning as error this action of the court.

The sale in this case was not made by defendant to plaintiff directly, but indirectly through Louis Octocavani, a dealer, though the testimony as to this is not clear. But assuming Octocavani, who ordered the meat, was a dealer, the first question to be considered is whether there was an implied warranty by defendant, that the meat sold to the dealer was free from disease, wholesome, and fit to eat, and whether this warranty extended to the consumer after the meat had passed through the dealer's hands.

The general rule is that, where the sale of articles of food is for immediate consumption, there is an implied warranty that the food is wholesome and fit for the purpose intended, irrespective of the seller's knowledge of disease or defects therein. (35 Cyc. 407, and cases cited.) The Supreme Court of Illinois, after an exhaustive review of the subject in Wiedeman *v.* Keller (171 Ill., 93) said, at page 98, 49 N. E., 210, at page 211:

> As a general rule, we think the decided weight of authority in the United States is that in all sales of meats or provisions for immediate domestic use by a retail dealer there is an implied warranty of fitness and wholesomeness for consumption. There is, however, no implied warranty of soundness or wholesomeness arising from the sale of meats or provisions to a dealer or middleman who buys on the market, not for consumption, but for sale to others. Nor would there be any liability, in a sale for immediate domestic use, where the vendor was not a regular dealer. (10 Am. & Eng. Ency. of Law, p. 157.) In this case, however, the appellee was a regular retail dealer, and as such he sold the meat to appellant for domestic use, and, under the law as it seems to be settled in this country, as the meat turned out to be unwholesome, he was liable, although he was not aware that it was diseased when he sold it to appellant.

This rule has been put in statutory form in Pennsylvania as far as it applies to articles of food by the act of May 4, 1889, P. L. 87, 3 P. & L. Dig. (2d ed.) page 6727, which provides that—

> In every sale of green, salted, pickled, or smoked meats, lard, and other articles of merchandise used wholly or in part for food, said goods or merchandise shall correspond in kind and quality with the description given, either orally or in writing, by the vendor; and in every sale of such goods or merchandise, unless the parties shall agree otherwise, there shall be an implied contract or undertaking that the goods or merchandise are sound and fit for household consumption.

The contention that the warranty did not extend to subsequent purchasers after the meat passed through the hands of middlemen can not be sustained. The case of Ketterer *v.* Armour & Co. (D. C.), 200 Fed., 322, is directly in point; that being a case of sale of pork infected with trichinæ. It was there said by Circuit Judge Noyes, at page 323:

> The remedies of injured consumers ought not to be made to depend upon the intricacies of the law of sales. The obligation of the manufacturer should not be based alone upon privity of contract. It should rest, as was once said, upon "the demands of social justice." The producer should be held responsible for the results of negligent acts which he can readily foresee. There is no analogy between the case where defective material, after passing through many hands, produces not to be looked for ill effects. The iron manufacturer who fails to inspect a piece of iron can not foresee that it will be used in a boiler and cause a ship to sink. But the meat packer who fails to inspect his products for poisonous parasites or ingredients knows that poison will poison, and that the persons to be poisoned through his neglect will be those who eat his products, and no one else. The natural, probable, and almost inevitable result of his negligence will be injury to the consumer, and, in my opinion, every consideration of law and public policy requires that the consumer should have a remedy.

To the same effect is Meshbesher *v.* Channellene Oil Co. (107 Minn. 104, 119 N. W. 428, 131 Am. St. Rep. 441), where the manufacturer was held liable to the consumer for impure oil purchased by the latter from a retail grocer.

* * * * * * *

These authorities effectually dispose of this question. It is contended by defendant, however, that since the sale was made in the original package used in interstate shipment, the transaction was exclusively within the Federal statutes relating to the

inspection and sale and transportation of meat, and neither the common-law doctrine of implied warranty nor the Pennsylvania statute above referred to, nor other Pennsylvania statute laws forbidding the sale of adulterated food applies, and as defendant had fully complied with the Federal inspection laws, the lower court was right in entering judgment for defendant non obstante veredicto.

* * * * * * *

We * * * hold that the Federal statutes providing for meat inspection by Government officers do not relieve the packer from liability for damages where he has made no inspection nor taken any steps to ascertain for himself whether the meat sold by him is fit for food. The common-law duty to sell only wholesome food still remains and the burden of discharging this duty has not been shifted to Government inspectors. The jury having found that the death of plaintiff's husband was the result of eating meat packed by defendant which was affected by a disease which the evidence showed was discoverable by proper inspection, the burden was on defendant to show fulfillment of its duty, which burden was not met by merely proving inspection by the United States Government inspectors.

Under the foregoing principles, governing the sale of articles of food, a prima facie case is made out by proof that the meat sold by defendant was diseased and caused the death of plaintiff's husband. It was not necessary to go further and prove defendant knew the food was unwholesome. Defendant's duty was absolute (35 Cyc. 407; Wiedeman *v.* Keller, supra; Meshbesher *v.* Channellene Oil Co., supra). It was bound to know that the meat was unwholesome and unfit for food, and this duty was not performed by merely showing an inspection and approval by United States Government inspectors. * * *

The judgment is reversed, and judgment is directed to be entered in favor of plaintiff on the verdict.

Brown, C. J., dissents.